Entry of Agricultural Workers in Canada

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Purpose

To provide an overview of Canada’s Temporary Foreign Worker Program (TFWP), and information specific to agriculture.

Including:
- General information on entry of temporary foreign workers in agriculture
- Governmental process
- Protections/services available to temporary foreign workers
- New Regulatory Changes
Entry of Temporary Foreign Workers in Canada

- The *Immigration and Refugee Protection Act (IRPA)* regulates the entry of all temporary foreign workers into Canada.

- The Temporary Foreign Worker Program (TFWP) is jointly managed by Human Resources and Skills Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC).

- The entry of foreign workers in Canada is driven by employer demand:
  - There are no numerical limits/quotas.
  - An employer can apply to HRSDC to hire a temporary foreign worker when Canadians/permanent residents are not readily available.
  - Employers may hire foreign nationals from any country in the world to work in any legal occupation, provided that both the employers and the workers meet the requirements and regulations outlined in *IRPA*.

- 182,322 temporary foreign workers entered Canada in 2010 in professional, managerial, technical, trade, and lower-skilled occupations.
Entry of TFWs in Agriculture

In Canada, TFWs in agricultural occupations enter under either:

- The Seasonal Agricultural Worker Program (SAWP), or
- General requirements for entry of TFWs in lower-skilled occupations

SAWP operates according to bilateral agreements between Canada and each country party to the agreement (Jamaica-1966, Barbados and Trinidad & Tobago-1967, Mexico-1974, OECS-1976)

The number of SAWP workers has steadily increased from 264 in 1966 to 23,895 in 2010

Canada no longer enters into bilateral agreements in agriculture, but does allow Canadian employers to hire foreign agricultural workers from other countries through general requirements for entry of TFWs in lower-skilled occupations introduced in 2002

The number of agricultural workers entering under general requirements for lower-skilled occupations has increased from 124 in 2002 to 5,182 in 2010
Role of HRSDC

When assessing a Labour Market Opinion (LMO), HRSDC/Service Canada reviews individual employer requests and assesses whether:

- The wages and working conditions are comparable to those offered to Canadians working in the same occupation.
- Employers conducted reasonable efforts to recruit, hire or train Canadians for the job.
- The hiring of the foreign worker will not affect a labour dispute or the employment of any Canadian worker involved in such a dispute.

In addition, HRSDC takes into account potential benefits related to the entry of temporary foreign workers and considers whether:

- The foreign worker is filling a labour shortage.
- The employment of the foreign worker will directly create new job opportunities or help retain jobs for Canadians.
- The foreign worker will transfer new skills and knowledge to Canadians.

There are additional requirements that employers need to meet before receiving approval to hire any temporary foreign workers in agricultural occupations under SAWP or under general entry of TFWs in lower-skilled occupations (e.g. employer-employee contracts, transportation, recruitment fees).

When a positive opinion is issued by HRSDC, the foreign national can then apply for a temporary work permit from CIC.
Role of CIC

- When a foreign national applies for a work permit, CIC:
  - Verifies that the job offer from the employer has been “confirmed” by HRSDC.
  - Ensures that the worker meets temporary resident criteria related to criminality and security.
  - Ensures that the worker has appropriate/required skills to work in the occupation in Canada.
  - Verifies that foreign workers meet medical tests required for temporary residents to Canada.

- If the applicant meets these criteria, CIC issues a work permit authorizing the worker to enter and work in Canada.
In addition to the regular requirements, the SAWP has additional requirements on employers, including:

- Signing an employer-employee contract outlining wages, duties, and conditions related to the transportation, accommodation, health and occupational safety of the foreign worker;
- Pay for part of transportation to and from the worker’s country of origin;
- Provide free accommodation for workers that meets provincial standards;
- Ensure the worker is registered to private health insurance until he/she is eligible for provincial health coverage; and
- Register the worker under the appropriate provincial workers’ compensation or workplace safety insurance plans.

Employment duration must not exceed 8 months.
In cases where an employer is interested in hiring a foreign worker in a lower skilled occupation (in agriculture or any other sector), there are additional conditions that the employer must be prepared to meet:

- Sign an employer-employee contract outlining wages, duties, and conditions related to the transportation, accommodation, health and occupational safety of the foreign worker.
- Cover all recruitment costs related to the hiring of the foreign worker.
- Help worker(s) find suitable, affordable accommodation.
- Pay full airfare for the foreign worker to and from their home country.
- Provide medical coverage until the worker is eligible for provincial health insurance coverage.
- Register worker(s) under the appropriate provincial workers compensation/workplace safety insurance plans.

While there are slight differences between requirements for SAWP and general requirements for low-skilled occupations, efforts have been made for costs and protections for workers to be as equivalent as possible.
Protections after Arrival

Labour Standards

- In Canada, labour standards, occupational health and safety, and industrial relations fall under provincial jurisdiction for approximately 90% of Canadian labour market (including in agriculture).

- Foreign workers are covered by labour standards, occupational health and safety, and industrial relations, similar to Canadians.

- Federal and provincial governments work to provide information to foreign workers on labour rights/responsibilities and contact points in the event of problems.
  - This information is provided in a number of languages.

- Some provinces are establishing contact offices specific for foreign workers on areas related to labour rights (e.g. Alberta TFW center).

- Federal and provincial governments are working on information agreements to allow for the sharing of employer information on previous breaches of labour standards to assist in future decisions.
New Regulatory Protections

- CIC, HRSDC, and CBSA prepared regulatory amendments to the *Immigration and Refugee Protection Regulations (IRPR)*, which came into effect on April 1, 2011.

- Intent of regulatory changes is to improve protections for all TFWs, including agriculture.

- The regulatory amendments include:
  - Clarification of the factors to assess the genuineness of a job offer;
  - Verification that employers provided wages, working conditions and employment in an occupation that were substantially the same as originally offered to a foreign worker; and
  - Ability for CIC to prevent employers who do not fulfill the terms of the offer of employment from hiring TFWs for 2 years.

- The federal government is also introducing legislation to better regulate the practices of immigration consultants, and some provinces (e.g. Alberta, Manitoba) have introduced regulations for labour recruiters contracted by Canadian employers.
Additional Information

At HRSDC:


At CIC:


For more information on the new changes to IRPR, please see:
